vidual may lawfully do, several may combine to do. *Gregory* v. *Duke of Brunswick*, 6 M. & G. 953; see 1 EDDY, COMB., §§ 474, 501. This qualification does not mean that every confederacy which causes pecuniary loss must respond in damages to the injured party. Fair business competition is an universally recognized justification. *Mogul Co.* v. *McGregor*, [1892] A. C. 25. The line between "fair" and "unfair" competition cannot be drawn rigidly, but it would seem that such facts as those in the principal case ought generally to amount to a justification. See *Bowen* v. *Matheson*, 14 Allen (Mass.) 499. The demurrer admitted that one purpose of the defendants was to injure the plaintiff. If that had been their sole purpose the combination would be unlawful. But in all "fair" competition the infliction of injury is contemplated and therefore intended, though as incidental to self-advancement. The decision is perhaps attributable to the prevalent feeling against monopolies as evidenced by Wisconsin legislation.

THE TITLE TO CERTIFICATES INDORSED IN BLANK. — It is well known that even a thief can give a *bona fide* purchaser a good title to money, bank bills or currency in any form. On the other hand a thief can never pass good title to stolen chattels. The reason for this distinction rests in the fact that expediency requires that the title to any medium of exchange should pass with possession. There is an intermediate class of instruments, including, for example, certificates of stock payable to bearer or indorsed in blank. These instruments are not negotiable, a mere thief cannot make a valid transfer of them, and yet, unlike chattels, one entrusted with their possession can pass a good title. *Jarvis* v. *Rogers*, 15 Mass. 389; *Rumball* v. *Metropolitan Bank*, 2 Q. B. D. 194. The question as to what is a sufficient entrusting has arisen in rather a curious way lately in Massachusetts. The owner of two certificates of indebtedness indorsed in blank left them in a sealed envelope with brokers for safe keeping. The brokers, knowing of the contents, subsequently tore open the envelope, and pledged the certificates for their own debts. They were sold under this pledge to the defendant, who bought without notice, and who was then sued by the original owner in trover. The court was ready to apply the rule that one entrusted with possession could pass title if it had been found that such was the custom, for the rule rests on the theory that one who has given all the indicia of title to another cannot assert title against a buyer in good faith from the latter. But the court held that although there was evidence of entrusting the envelope there was no evidence of entrusting the certificates. *Scollans* v. *Rollins*, 60 N. E. Rep. 983 (Mass.). In support of this finding is cited the ancient doctrine of larceny by breaking bulk. The doctrine is that if a package of goods is delivered to a bailee, and he separates them, and disposes of them he commits larceny. *Commonwealth* v. *Brown*, 4 Mass. 580. Of course the difficulty in such a case is to find the taking of possession against the will of the owner, which is a necessary element of larceny. The doctrine is ordinarily explained by means of the fiction that the bailee in breaking bulk ends the bailment and by the same act takes possession wrongfully. 2 East, P. C., 695; 3 GREENL., Ev., § 162; *Commonwealth* v. *James*, 1 Pick. (Mass.) 375. It is true, under this view of the doctrine, that by a fiction the bailee subsequently lost possession, and

wrongfully retook it. His possession at the time of sale had not been entrusted so that he could not pass title to the defendant. Clearly, however, this fiction in no way renders the plaintiff more deserving, and it should not alter the actual fact that the brokers never lost possession. By the plaintiff's delivery the brokers were given that real possession which ultimately enabled them to make the sale. Under these circumstances, this fiction of the criminal law established for a wholly different purpose, should not be invoked to the prejudice of a *bona fide* purchaser.

The court rests its decision, however, upon another theory of the doctrine of breaking bulk. One judge alone in the case in which that doctrine originated, and a Massachusetts judge by way of *dictum*, explain the rule on the ground that the bailee never is given possession of the contents of the package. *Carrier's Case*, Y. B. 13 Edw. IV. 9, *pl.* 5, per Choke, J., *Belknap* v. *National Bank of N. A.*, 100 Mass. 376, *per* Chapman, C. J. As has been indicated, this view is opposed to the great weight of authority. It does not accord with the actual facts, and is at most a fiction, like the other view of the doctrine. Consequently as a basis for a decision it is unsatisfactory.

THE LIABILITY OF BUCKET SHOPS AS CONSTRUCTIVE TRUSTEES. — The rule is well recognized that where a defendant aids in a breach of trust while acting in good faith and with the trustee's authority, his liability to the *cestui* is limited to making restitution for the benefit actually received. *Florence, etc., Co.* v. *Zeigler*, 58 Ala. 221; *Bonesteel* v. *Bonesteel*, 30 Wis. 516. A recent Court of Appeals decision involves the application of this doctrine to a novel set of facts. *Bendinger* v. *Central, etc., Exchange*, 109 Fed. Rep. 926. Without notice of the trust a bucket shop received misappropriated trust funds as margins. After the payment of profits to the trustee, the whole was finally "wiped out" when the market fell. In a suit against the bucket shop the *cestui* was allowed to recover the total amount advanced without deducting the profits returned to the trustee. The *ratio decidendi* is that as the transactions were outlawed by a statute, which also allowed the recovery of money lost in gambling, the defendant became a trustee *de son tort* from the moment of receiving the original funds. Had the transactions been legitimate, that is, had the margins been lost through a depreciation in investments actually purchased, the defendant would have been protected, as he would have retained no part of the trust *res*. *Dunlap* v. *Limes*, 49 Ia. 177. On this reasoning it might seem that the defendant in the principal case ought not to be responsible for the money returned to the trustee. But the defendant, while purporting to pay profits, was as an actual fact merely paying a lost bet. On somewhat similar facts an English case holds that when the defendant makes fictitious entries he cannot later plead that they are untrue. *Rapp* v. *Latham*, 2 B. & Ald. 795. It might seem therefore that the defendant here cannot maintain that the repayment to the trustee "as profits" is a part of the principal. This reasoning is not adopted in the principal case, however, the language of which denotes an intention to punish the defendant merely as a law breaker. The result of the position taken by the court makes a party with no knowledge of the trust absolutely liable to the beneficiary from the moment